

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MAGDI FARAG,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	NO. 04-4710
v.	:	
	:	
ATTORNEY GENERAL,	:	
	:	
Respondent.	:	

**MEMORANDUM**

BUCKWALTER, S.J.

January 20, 2005

In this habeas corpus case, petitioner was successful before the Immigration Judge (IJ) who, on April 26, 2004, denied his application for withholding of removal but granted his request for deferral of removal based upon his claim that he would be tortured upon return to his native country, Egypt.

The government appealed and the Board of Immigration sustained that appeal, and on September 14, 2004 vacated the IJ's decision.

In his habeas corpus petition, Farag asserts he was denied due process in view of the voluminous evidence supporting the IJ's decision with respect to his claims under the Convention Against Torture, and that the BIA decision is plain constitutional error.

Our reading of Bakhtriger v. Elwood, 360 F.3d 414 (3d Cir. 2004) confirms this court's jurisdiction in criminal alien removal habeas petitions as this one as being limited to constitutional challenges or errors of law. This can include issues of application of the law to

facts, where the facts are undisputed as in this case. See Ogbudimkpa v. Ashcroft, 342 F.3d 207 (3d Cir. 2003).

Both parties agree that to be successful under the Convention Against Torture (CAT), an alien has the burden of proving that it is more likely than not that he or she will be tortured at the hands of government officials while in government custody.

In reviewing the decision of the IJ, the BIA reviewed the record (*See* BIA opinion Govt. Ex. F) and concluded the petitioner had failed to meet his burden of proof. The explanation by the BIA clearly shows that it correctly applied the facts to the law. We quote in brief from that opinion:

While the respondent testified that he was detained and mistreated by Egyptian officials on two separate occasions in 1979 on the basis of his participation in a political demonstration, we note that these arrests took place over 25 years ago and the respondent has failed to present evidence to establish that Egyptian authorities continue to seek to punish him for his previous participation in these demonstrations (Tr. at 50-56). Furthermore, we find no basis in the record to conclude that the respondent will suffer torture by the Egyptian government for his involvement in the Muslim Brotherhood (Tr. at 56-60). The respondent's 4-year affiliation with this organization between 1980 and 1984 did not result in any harm or mistreatment by the Egyptian government while he was living in Egypt and the respondent has not continued his involvement in the organization since he left Egypt in 1984. Moreover, the respondent has failed to present credible evidence establishing that criminal deportees are subject to detention upon their removal to Egypt or that such detention would result in torture, as defined by the regulations. See *Matter of M-B-A-*, 23 I&N Dec. 474 (BIA 2002) (denying protection under Convention Against Torture where alien's claim is based upon a "chain of assumptions and a fear of what might happen" rather than substantial evidence in the record); *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002).

In petitioner's brief, he concedes that he presented no evidence that the Egyptian government still sought to harm him because of his involvement in student protests. In fact, petitioner concedes that since there are no student protests of note, the government would have no need to seek him out.

The BIA also considered the other evidence the IJ referred to in his report, but found that it did not show that it was more likely than not that this petitioner would be subject to torture.

It is clear that the BIA not only reviewed the record but did so based upon the contentions which the petitioner thought established his burden under CAT. The petitioner cannot show any constitutional error such as would entitle him to relief.

An order follows.

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**ORDER**

AND NOW, this 20<sup>th</sup> day of January, 2005, upon consideration of the Petition for Habeas Corpus and Stay of Removal, and Respondent's Opposition thereto, it is hereby

ORDERED that:

1. The Petition is DENIED;
2. The Stay of Removal is LIFTED; and
3. The Clerk of Court shall CLOSE this case file.

BY THE COURT:

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RONALD L. BUCKWALTER, S.J.